

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

ROBERTO ESQUIVEL CABRERA, #41078-018

PETITIONER

VERSUS

CIVIL ACTION NO. 5:08cv193-DCB-MTP
APPEAL NO. 08-60921

BRUCE PEARSON

RESPONDENT

ORDER

The United States Court of Appeals for the Fifth Circuit entered an order which was filed stamped November 4, 2008, and entered on the docket of this court on November 12, 2008, remanding this civil action to this court. The order of the Fifth Circuit treated the notice of appeal [10] as a motion to reopen the time to file the notice of appeal and directed this court to determine the circumstances relating to petitioner receiving notice of the final judgment.

Therefore, it is hereby

ORDERED:

1. That within 20 days of the entry of this order petitioner must file a declaration made under penalty of perjury as set forth in 28 U.S.C. § 1746 or file a notarized statement, either of which must set forth the following:

- (a) state the circumstances under which petitioner received notice that the final judgment had been entered;
- (b) state the date when petitioner received notice that the final judgment had been entered;
- (c) state if petitioner used the prison mail system to mail his notice of appeal;
- (d) state if petitioner used the prison mail system to mail his motion to reopen;
- (e) if the answer to "(c)" is "yes", state the date petitioner placed the notice of appeal in the mail along with any attachments, *i.e.* the institution's mail log, that establishes that petitioner deposited the notice of appeal in the institution's internal mail system;

(f) if the answer to "(d)" is "yes", state the date petitioner placed the motion to reopen in the mail along with any attachments, *i.e.* the institution's mail log, that establishes that petitioner deposited the motion to reopen the time to file the notice of appeal in the institution's internal mail system; and

(g) state whether any party would be prejudiced by reopening the time to file the notice of appeal.

2. That petitioner is warned that failure to advise this court of a change of address or failure to comply with any order of this court will be deemed as a purposeful delay and contumacious act by petitioner and will result in the dismissal of petitioner's motion to reopen the time to file the notice of appeal.

SO ORDERED, this the 28th day of November, 2008.

s/ David Bramlette
UNITED STATES DISTRICT JUDGE